

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.09.2019
Delivered on : 06.09.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl. R.C. Nos.641 & 642 of 2010
and
M.P. No.1 of 2010

S.Amutha

... Petitioner
in both case

Vs.

C.Manivanna Bhupathy

... Respondent in
both cases

Prayer: Criminal Revision Cases filed under Section 397 r/w. 401 Cr.P.C., praying to set aside the common judgment dated 20.08.2009, passed in C.A.Nos.176 and 191 of 2008 on the file of the Additional District-cum-Fast Track Court No.I, Erode, setting aside the order dated 27.06.2008, made by the Judicial Magistrate No.II, Erode, in Crl.M.P.No.5980 of 2007.

For Petitioner : Mr.K.Thilageswaran
in both cases

For Respondent : Mr.I.C.Vasudevan
in both cases

C O M M O N O R D E R

Marriages are made in heaven, but the married die fighting in the law Courts.

2.Manivanna Bhupathy ('Bhupathy' for brevity) got married to Amutha on 15.11.1992. More than five years, they were issueless. However, a son, Aravinth was born on 02.01.1996 and a daughter, Suganthi was born on 14.10.1997. Bhupathy is working as Health Inspector in the Department of Public Health & Preventive Medicine and Family Welfare. As Health Inspector, Bhupathy was required to visit various villages and attend to the medical needs of the villagers. Many times, he would have to take a staff nurse along with him for attending to the emergent needs of villagers. However, Amutha believed that, Bhupathy was having illicit intimacy with one Krishnaveni and

so, she sent representations to the higher officials of the Department, complaining about her husband. This strained their marital relationship. According to Bhupathy, Amutha left the matrimonial home on 19.04.2005, leaving their two children behind but according to Amutha, she was driven out of the matrimonial home by Bhupathy.

3. Bhupathy filed H.M.O.P.No.76 of 2005 in the Sub Court, Erode, for divorce on the ground of cruelty. As a counter blast, Amutha filed H.M.O.P.No.188 of 2005 in the Sub Court, Erode, for restitution of conjugal rights. Amutha also filed M.C.No.160 of 2005 in the Family Court, Coimbatore, under Section 125 Cr.P.C., claiming maintenance from Bhupathy, in which, an order was passed on 12.12.2006, directing Bhupathy to pay Rs.1,250/- per month as maintenance. Amutha, also obtained an order in I.A.No.343 of 2005 in H.M.O.P.No.76 of 2005 from the Sub-Court, Erode, in which, Bhupathy was directed to pay a maintenance amount of Rs.1,300/- per month pendente lite. Not content with this, Amutha initiated proceedings under 'Protection of Women from Domestic Violence Act, 2005' ('D.V. Act' for brevity) in Crl.M.P.No.5980 of 2007 before the Judicial Magistrate No.II, Erode, claiming various reliefs, including right of residence and maintenance.

4. Trials proceeded before the Sub-Court, Erode, in the matrimonial cases and before the Judicial Magistrate Court No.II, Erode, in the D.V. Act case.

5. In the D.V. Act proceedings, Amutha examined herself as P.W.1 and one Sakthivel was examined as P.W.2. On the side of Amutha, Exhibits P1 to P32 were marked. Bhupathy examined himself as R.W.1 and marked Exhibits R1 to R11. After considering the evidence adduced by the parties, the learned Judicial Magistrate No.II, Erode, passed final orders in Crl.M.P.No.5980 of 2007 (D.V. Act case) on 27.06.2008, disallowing the claim of maintenance on the ground that maintenance has been ordered by the Family Court, Coimbatore, in M.C.No.160 of 2005 and interim maintenance has been ordered by the Sub-Court, Erode, in I.A.No.343 of 2005 in H.M.O.P. No.76 of 2005. Similarly, the claim of Amutha for return of her sridhana articles and 50 sovereigns of jewellery given at the time of marriage was also negatived on the ground that she did not adduce any evidence on that aspect. However, the learned Judicial Magistrate directed Bhupathy to provide accommodation for Amutha in Door No.45, Main Road, Nagarajapuram, Thiruvalluvar Nagar, Arachalur.

6. Challenging the order dated 27.06.2008, passed by the learned Judicial Magistrate No.II, Erode, in Crl.M.P.No.5980 of 2007 (D.V. Act case), Bhupathy filed an appeal in C.A.No.176 of 2008 and Amutha filed an appeal in C.A.No.191 of 2008 under Section 29 of the D.V. Act, before the Principal District and

Sessions Court, Erode.

7.Now, reverting to the matrimonial proceedings in the Sub-Court, Erode, joint trial was conducted in H.M.O.P.No.76 of 2005 (petition for divorce, filed by Bhupathy) and H.M.O.P.No.188 of 2005 (petition for restitution of conjugal rights, filed by Amutha), in which, Bhupathy examined himself as P.W.1 and his father Chidambaram was examined as P.W.2. On the side of Bhupathy, Exhibits P1 to P3 were marked. Amutha examined herself as R.W.1 and marked Exhibits R1 to R4. After considering the evidence adduced by the parties, the Sub-Court, Erode, by a common judgment and decrees dated 28.11.2008, allowed H.M.O.P.No.76 of 2005 and granted a decree of divorce and dismissed H.M.O.P.No.188 of 2005, the petition for restitution of conjugal rights.

8.Challenging the judgment and decree dated 28.11.2008, passed by the Sub-Court, Erode, Amutha filed two appeals, viz., C.M.A.No.4 of 2009 against H.M.O.P.No.76 of 2005 and C.M.A.No.5 of 2009 against H.M.O.P.No.188 of 2005, before the Principal District and Sessions Court, Erode.

9.The Principal District and Sessions Judge, Erode, made over the two appeals in C.M.A.Nos.4 and 5 of 2009 and also the two appeals in C.A.Nos.176 and 191 of 2008, arising under the D.V. Act, to the Additional District and Sessions Court (Fast Track Court No.I), Erode. Fortunately, all the four appeals were heard by the same Judge. The Additional District and Sessions Judge, Fast Track Court No.I, Erode, by a common judgment dated 20.08.2009, allowed C.A.No.176 of 2008, filed by Bhupathy, and set aside the order passed by the Judicial Magistrate No.II, Erode, in CrI.M.P. No.5980 of 2007, directing Bhupathy to provide accommodation for Amutha in Door No.45, Main Road, Nagarajapuram, Thiruvalluvar Nagar, Arachalur. The said Court dismissed C.A.No.191 of 2008, filed by Amutha, seeking maintenance under the D.V. Act and confirmed the order of the Judicial Magistrate No.II, Erode, on this aspect.

10.Challenging the common judgment dated 20.08.2009, passed in C.A.Nos.176 and 191 of 2008, Amutha has preferred these two criminal revision cases in CrI.R.C.Nos.641 and 642 of 2010 before this Court under Section 397 r/w. 401 Cr.P.C.

11.On the same day, i.e., 20.08.2009, the Additional District and Sessions Judge, Fast Track Court No.I, Erode, by separate judgment and decrees, dismissed C.M.A.Nos.4 and 5 of 2009, that were filed by Amutha, challenging the common judgment passed by the Sub-Court, Erode, in the matrimonial cases, granting the relief of divorce and denying the relief of restitution of conjugal rights. Challenging this judgment, Amutha has preferred two appeals, viz., C.M.S.A. Nos.1 and 2 of 2010, before this Court.

12. On the orders of the Hon'ble Chief Justice, the aforesaid two Civil Miscellaneous Second Appeals and these two Criminal Revision Cases were directed to be posted before this Court and hence, they were heard together.

13. At this juncture, it may be relevant to mention about the trajectory of the proceedings in M.C.No.160 of 2005, that was filed by Amutha, under Section 125 Cr.P.C. in the Family Court, Coimbatore. As stated above, the Family Court, Coimbatore, by order dated 12.12.2006, had directed Bhupathy to pay Rs.1,250/- per month as maintenance. Not satisfied with that, Amutha filed an enhancement petition before the Family Court, Coimbatore, in which, the maintenance amount was enhanced from Rs.1,250/- to Rs.3,700/- per month, challenging which, Bhupathy filed Crl.R.C.No.894 of 2012 and Amutha filed Crl.R.C.No.1289 of 2012 in this Court. This Court heard both the revision cases and by order dated 11.01.2013, dismissed Crl.R.C.No.894 of 2012, that was filed by Bhupathi and enhanced the maintenance amount to Rs.4,000/- per month in Crl.R.C.No.1289 of 2012, that was filed by Amutha. Now, it is reported that, Bhupathy is paying Rs.9,000/- every month to Amutha and their two children have attained the age of majority.

14. Heard Mr.K.Thilageswaran, learned counsel for Amutha and Mr.I.C.Vasudeven, learned counsel for Bhupathy.

15. Before advertng to the rival submissions, it may be necessary to state here that, a three Judge Bench of the Supreme Court in Girish Kumar Suneja Vs. CBI [(2017) 14 SCC 809], has held that revisional jurisdiction is a discretionary one and can be exercised only if the High Court finds that there is an error apparent on the face of the record and for better appreciation, the relevant portion of the order is extracted hereunder :

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is

deprived of exercising its extraordinary discretionary power available under Section 397 Cr.P.C."

16.While exercising revisional powers under Section 397 r/w. 401 Cr.P.C., this Court is required to find out, if there is any illegality or impropriety in the findings of the trial Court and the appellate Court, warranting interference, and it is not open to this Court to exercise the revisional power as a second appellate forum. In this context, it is profitable to allude to the following paragraphs in the judgment of the Supreme Court in State of Maharashtra Vs Jagmohan Singh Kuldip Singh Anand and Others, etc. [(2004)7 SCC 659] :

"22.The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be,

"for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court".

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.
(emphasis supplied)

23.On this aspect, it is sufficient to refer to and rely on the decision of this Court in Duli Chand v. Delhi Admn. [(1975) 4 SCC 649 : 1975 SCC (Cri) 663 : AIR 1975 SC 1960] in which it is observed thus: (SCC p. 651, para 5)

"The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent

finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse."

17.This legal principle has been reiterated very recently by the Supreme Court in Bir Singh Vs Mukesh Kumar [(2019) 4 SCC 197], wherein, the Supreme Court formulated the following question of law :

"(i) whether a Revisional Court can, in exercise of its discretionary jurisdiction, interfere with an order of conviction in the absence of any jurisdictional error or error of law"

The answer of the Supreme Court to the aforesaid question is as under :

"19.It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

20.As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [(2008) 14 SCC 457], it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. The answer to the first question is therefore, in the negative."

18.In this case, the marriage took place on 15.11.1992 and the whole trouble started only in the year 2005, when Amutha started suspecting the fidelity of her husband, Bhupathy. Mr.K.Thilageswaran placed strong reliance on the letter dated 02.05.2005 (Ex.P2), written by Amutha to Bhupathy, wherein, she has alleged that she was driven away from the matrimonial home on 19.04.2005.

19.This Court carefully perused the said letter. It is a copy of a hand-written letter, the original of which was sent by Amutha to Bhupathy, by registered post. In that letter, Amutha has alleged that, Bhupathy is having illicit intimacy with one Baby, who is working with him. Later, she has changed her plea

and has taken a stand that, Bhupathy was having illicit intimacy with one Dhanalakshmi @ Baby. However, Bhupathy denied this allegation and it is his contention that, Dhanalakshmi is a staff nurse working with him and that, as Health Inspector, he was required to go with her for inspection to various villages.

20.Though, Amutha filed several petitions in various forums, admittedly, their two children were brought up by Bhupathy and no step was taken by Amutha to seek custody of her children. She filed M.C.No.160 of 2005 in the Family Court, Coimbatore, under Section 125 Cr.P.C.; she filed a petition for restitution of conjugal rights in H.M.O.P.No.188 of 2005 before Sub-Court, Erode; she initiated proceedings under D.V. Act, which is the subject matter in these revision cases; she lodged complaint to the police against Bhupathy; she also lodged complaint with the Department, in which Bhupathy was working, alleging that he was having illicit intimacy with his colleague. When she could do all these, it is not known as to why, she never sought for custody of her two children. The letter dated 02.05.2005 (Ex.P2) is a self serving statement and is not a substantive piece of evidence to hold that the allegations found therein have been proved.

21.Mr.K.Thilageswaran contended that the trial Court had erroneously given the right of residence to Amutha in Door No.45, Main Road, Nagarajapuram, Thiruvalluvar Nagar, Arachalur, instead of Door No.3, Main Road, Thiruvalluvar Nagar, Arachalur, which is the permanent address of Bhupathy.

22.In this case, the evidence on record shows that, Amutha, for no good reasons, suspected the fidelity of her husband, quarrelled with him and left for her maternal home on 19.04.2005, leaving her two children with Bhupathy. No substantive evidence has been adduced by Amutha to establish that domestic violence was perpetrated on her by Bhupathy. In the absence of any material to infer that Bhupathy had perpetrated domestic violence, no relief under D.V. Act can be granted to Amutha. Therefore, the appellate Court is justified in passing the judgment under appeal.

23.Mr.K.Thilageswaran contended that, Bhupathy is in possession of 50 sovereigns of jewellery and sridhana articles, which, he is bound to return to Amutha. However, the trial Court has given a clear finding that, except pleading in her petition, Amutha has not stated anything about that in her testimony. It is reported that she is receiving maintenance at Rs.9,000/- per month from Bhupathy and their children have grown up and have attained the age of majority.

24.In the result, this Court does not find any infirmity in the judgment passed by the Additional District and Sessions Judge, Fast Track Court No.I, Erode, warranting interference. Therefore, these two Criminal Revision Cases are dismissed. Consequently, connected Miscellaneous Petition is closed.

This Court, by separate judgment, has dismissed C.M.S.A.Nos.1 and 2 of 2010, today.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

Copy to :

1.The Additional District Judge,
Fast Track Court No.I,
Erode.

2.The Judicial Magistrate No.II,
Erode.

Cr1. R.C. Nos.641 & 642 of 2010

SSV(CO)
SP(11/11/2019)